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Original Article

An Alternative Criminal Dispute Settlement: A Criminal Administration of Justice and Judicial Precedent

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Abstract

The alternative mode of settlement of the criminal cases is just to avoid regular trial of the case and the disputes has to be settled generally on the bases of compromise among the parties, firstly it is beneficial to reduce the pendency of cases in the criminal courts and relax to the inmates in the overcrowded jails, secondly it may waive the chances of future enmity amongst the parties and their supporters, thirdly it will reduce the legal expenses over the litigations to the victims/State counsels/offenders. Because offences has been committed against the State and normally criminal cases has prosecuting by our State counsel except complaint cases. Sometimes, seems that petty or non-cognizable offences has been pending for trial for a long time in the Court and victims/offenders are desirous for expeditiously disposal of the litigations but it may not possible due to various reasons under these circumstances it is necessary for the interest of concerned parties to make amicably settlement of the disputes if such type of case comes under the purview of compoundable cases under Section 320 Cr.P.C or take the recourse of Plea of Bargain as amended in Cr.P.C, 2005, as the case may be. This is the process of settlement of disputes may be captioned: restorative justice in criminal law of jurisprudence. Besides, sometimes parties are falsely implicated in the litigation, they can avail the remedy for quashing the FIR/charge sheet under Section 482 Cr.P.C or under article 226/227 of the constitution and another remedy raise the issue before appropriate Govt. to withdrawal of case under Section 321 Cr.P.C. The dowry case normally has not yet initiated unless it will refer to the mediation centre to the amicably settlement of the disputes among the parties, as long as mediation is being failed then case will refer to the regular court to adjudicate on merits of the litigations. In conclusion, restorative justice is the best method for the settlement of compoundable cases or the cases in which the plea of bargain will put on motion because it is cheap & speedy way to the disposal of the case but it will also look into the matters of non bail able and cognizable offences in which witnesses becomes hostile, it is a serious gravity of the nature of trial, it must strictly stop this practice in the litigation.

Keywords: Judicial Precedent; Litigation; Criminal Dispute.

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Introduction

The alternative mode of settlement of the criminal cases is just to avoid regular trial of the case and the disputes has to be settled generally on the bases of compromise among the parties, firstly it is beneficial to reduce the pendency of cases in the criminal courts and relax to the inmates in the overcrowded jails, secondly it may waive the chances of future enmity amongst the parties and their supporters, thirdly it will reduce the legal expenses over the litigations to the victims/State

counsels/offenders. Because offences has been committed against the State and normally criminal cases has prosecuting by our State counsel except complaint cases. Sometimes, seems that petty or non-cognizable offences has been pending for trial for a long time in the Court and victims/offenders are desirous for expeditiously disposal of the litigations but it may not possible due to various reasons under these circumstances it is necessary for the interest of concerned parties to make amicably settlement of the disputes if such type of case comes under the purview of compoundable cases under Section 320 Cr.P.C or take the recourse of Plea of Bargain as amended in Cr. P.C, 2005, as the case may be. This is the process of settlement of disputes may be captioned: restorative justice in criminal law of jurisprudence. Besides, sometimes parties are falsely implicated in the litigation, they can avail the remedy for quashing the FIR/ charge sheet under Section 482 Cr. P.C or under article 226/227 of the constitution and another remedy raise the issue before appropriate Govt. to withdrawal of case under Section 321 Cr. P.C. The dowry case normally has not yet initiated unless it will refer to the mediation centre to the amicably settlement of the disputes among the parties, as long as mediation is being failed then case will refer to the regular court to adjudicate on merits of the litigations.

Alternative Dispute Resolution: Mechanism

An initiation of liberal economy and its co-relation with global economy and coming into existence the World Trade Organisation, there is going to be spurt in trading in goods, services, investments, intellectual properties disputes are likely to arise between the trading parties, which would be diverse in nature and complex, involving big sums. Such disputes require quick and amicably settlement, and cannot tolerate the prolonged legal process in courts, appeal, review and revision. There is a need for settlement of disputes outside the judicial system[1] –

Dispute Resolution Mechanism

Alternative Dispute Resolution is consists of:-

a) Resolution through Courts means litigations

b) Resolution alternative to Courts means ADR

Our Constitution of the Republic of India guarantees, besides other rights, safeguards against arbitrary deprivation of life and personal liberty by providing in Article 21 that no person shall be deprived of his life or personal liberty except according to procedure established by law. Besides, adoption of a Republican Constitution by India in 1950 did not disturb continuity of existing laws and unified structure of Courts. Unity and Uniformity of the judicial structure were preserved by placing such area of law as criminal law and procedure, civil procedure, will, succession, registration of deeds and documents, evidence etc., in Concurrent List[2].

An Alternative Criminal Dispute Settlement has to follow by the views as expressed by Abraham Lincoln:-

> "Discourage litigation persuade your neighbours to compromise whenever you can. Point out to them how nominal winner is often a real loser:- in fees, expenses, and waste of time. As a peace maker; the lawyer has a superior opportunity of being a good man. There will be business enough"[3].

The Government of India is always favouring to settle the dispute by means of alternative dispute resolution mechanism instead of litigation. Besides, public sector undertaking can also come within the preview of ADR as the view express by the Hon'ble Supreme Court of India:-

> "I would also like to state that the Government respects the views expressed by this Hon'ble Court and as excepted them as public undertakings of the Central Government. The Union of India fight their litigation court by spending money on fee on counsel, court fee, procedural expenses and wasting public time. It is in this context that the Cabinet Secretariat has issued instructions from time to time to all departments of the Government of India as well as public undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the government or through arbitration and recourse to litigation should be eliminated[4]."

The policy of the Government of India as well as judicial approach reflects the ideas to settle the dispute amicably and avoid the chance of the litigation which will also helpful to reduce the pendency in our Courts but it seems to be appeared that entire scheme of the litigation does not come within the preview of amicably settlement or settle by means of ADR because legal impediment is based on the Section 320 of the Cr. P.C. which provides the schedule of different category of the cases to be settled out of court by moving a compromise

application before the court with or without leave of the court as the provisions enumerated in Section 320 because non compoundable offences like murder, dacoity and rape etc. could not come within the preview under Section 320 of the Cr. P.C. Apart, from this, our legislature has also design the Section 321 of the Cr. P.C. is correlated with withdrawal of the prosecution due to sometime it also seems that some fake cases has to be registered against the innocent persons at the behest of influential and high handed person. Hence, it would be withdrawal at the initiation of the Home Ministry of the appropriate government and similar provision has also made that in case fake FIR would be registered against innocent person in that circumstances Police authorities has empowered under Section 182 of the IPC to initiate legal proceedings against the informant. Mechanism of arbitration discourages litigation as a means of resolution of disputes through Courts. Arbitration is a dispute resolution in which the parties agree to submit their dispute to a person, called be arbitrator, who decided the matter by applying the same law which the Courts would have done. It is the judicial determination of the dispute. Parties choose the arbitrator, the procedure to be followed by him and the language in which the proceeding conducted[5]. The Supreme Court has also held that:-

> "Dealing with tribunals whose jurisdiction is drive from the consent of the parties, they list, apart from arbitral tribunals, persons (not properly called tribunals) entrusted by consent with the power to affect the legal rights of the two parties *inter se* in a manner creating legally enforceable rights, but intended to do so by a procedure of ministerial and not a judicial nature (for example, persons appointed by contract to value property or to certify the compliance of the building works with a specification). There are also other tribunals with a consensual jurisdiction whose decision are intended to affect the private right of the two parties *inter se*, not in a manner which create a legally enforceable remedy (for example, conciliation tribunals of local religious communities, or persons, or groups)[6]."

Right now, Indian economy is also integrated with the World economy; it became necessary for the quick settlement of the disputes between the parties outside the judicial system because our litigation process is too lengthy it will also affect the nature of transactions of the business concern. ADR is a best and quick method to resolve our disputes outside the Court. Besides, arbitration, conciliation and negotiation are the important ingredients of such system known as alternative dispute resolution (ADR). In spite of formality of such system, it leads to finality. Dispute settlement in this manner is the binding force among the parties. Ultimately this system is a beneficial to the parties to settle their disputes in a cheap and speedy manner[7]. The Supreme Court has also held in this context[8]:-

> "Experience shows and the law reports bear ample testimony that the proceedings under the Act (1940 Act) have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for the expeditious disposal of their dispute has by the decision of the courts clothed with 'legalese' of enforceable complexity".

The similar views were also observed by the Apex Court of India that[9]:-

> "The 1996 ACT is very different from the Arbitration Act, 1940. The provisions of this Act have, therefore to be interpreted and construed independently and in fact reference to 1940 Act may actually lead to misconstruction. In other words, the provisions of 1996 Act have to be interpreted being uninfluenced by the principle underlying the 1940 Act. In order to get help in construing these provisions it is more relevant to refer to UNICITRAL Model Law rather than the 1940 Act."

Alternative Disputes Redressal: Lok Adalat

The movement towards alternative dispute redressal (ADR) have receive Parliamentary recognition and support by way of comprehensive legislation: The Legal Service Authorities Act, 1987 brought for the establishment of the Lok Adalat for the settlement of disputes amicably it is a mile stone for the cheap and speedy justice among the parties and Lok Adalat would adjudicate upon the Civil and Criminal matters which is very helpful to reduce the pendency of the Courts[10].

Alternative Criminal Dispute Settlement

The dowry case normally has not yet initiated unless it will refer to the mediation centre to the amicably settlement of the disputes among the parties, as long as mediation is being failed then case will refer to the regular court to adjudicate

on merits of the litigations. Besides, offences that may lawfully be compounded under Section 320 of the Cr. P.C. and other offences which are not mentioned in the first & second tables of Section 320 of the Cr. P.C. cannot be compoundable[11]. The amicably settlement in a compoundable case may oust the jurisdiction of the Court to try the case and it may complete as soon as it is file in the litigation and as a result of acquittal of the accused even if the informant has subsequently resiles from it. If it proved that the parties signed the document of compromise and understood its contents, it is incompetent for either to withdraw from it[12]. The offences which do not come to the purview under Section 320 of the Cr. P.C. is not compoundable and the same view expressed by different High Court. Apart from this offence under Section 498A/406 of the I.P.C is not compoundable but in the interest of matrimonial life of the husband and wife, normally High Courts have exercising the inherent power to compound such type of offences under Section 482 of the Cr. P.C. The Public Prosecutor/Assistant Prosecutor may withdrawal of prosecution from the Court with the consent of the Court on the basis of the sound and judicial grounds. Because, once as soon as a prosecution is initiated it will come within the domain of the Court and it cannot be restrained except on the sound judicial principles. Besides, under Section 321 of the Cr. P.C has made provisions for consideration of the withdrawal of the criminal cases by public prosecutor with the consent of the Court. It is an opportunity to justify on boarder consideration of peace and harmony among the parties of the litigation and may also develop such situation to control the enmity among the parties and also to develop the brotherhood, loves, affection and harmony of the locality and to restrain concoct and plant cases[13].

Plea of Bargain: Amicably Settlement of Disputes

The concept of Plea of Bargaining is derived from Latin maxim "Nolo Contendere" means "I do not wish to contend" moreover asserted that the implied confession, or quasi-confession of guilty, a plea of guilty but our criminal law says that this sort of plea of bargain's statement cannot be used for any other purposes except for the purpose to make an application before Court to decide the case in term of plea of bargaining. Besides, dictionary of Black has stated that "the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to the approval of the Court" and the settlement of disputes by way of Plea of Bargain has been introduced in a new Chapter XXIA, dealt with under Sections 265A to 265L of the Cr. P.C., Amendment Act No. 2 of 2006 under the provisions of these Section accused may move an application for plea of bargain before Court for the disposition of the case and Court will issue the notice to the Public Prosecutor or Complainant as the case may be and heard the parties, thereafter give them an opportunity to mutually satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting and if the Court will satisfy under the process of plea of bargain, then victim may get compensation or expenses incur for the litigation but plea of bargain is applicable to the cases in which maximum punishment awarded up to 7 years or these are not socio economics offences as mentioned under Section 265A (2) of the Cr. P.C., besides, offence is not committed against a women or a child below the age of fourteen years[14]. Apart from this, application for plea for bargain is not maintainable in case the accused is previously convicted by a Court in a case in which he had been charged with the same offence as such provided under Section 265B (2) of the Cr. P.C. and the 19 socio economics offences are enumerated in the list under Section 265A of the Cr. P.C.[15].

The Judge Made Law in India: A Judicial Precedent

It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is mandate of the Constitution as provided in article 141 that the law declared by the Supreme Court shall be binding on all Courts within the territory of India[16]. Besides, the judicial discipline to abide by Supreme Court decision cannot be forsaken under any pretext by any authority or Court be it even High Court[17]. If the High Court has distinguishing the judgment of Apex Court on ground that there was no elaborate discussion and therefore, no reason is discernible, is clearly violative of judicial discipline[18]. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision[19]. A Division Bench of Two Judges cannot overturn the decision of another Bench of two Judges. If they are unable to agree, they should refer it to a larger Bench[20].

The Supreme Court decision is binding on lower Courts. It cannot be distinguished mere because some facts allegedly escaped its attention, more so when Supreme Court had before it the factual aspects in toto[21]. But decisions of the Courts cannot be considered as binding authority in view of statutory provisions having undergone legislative changes[22]. When law in India is clear and settled no occasion arises to rely upon foreign case laws laying down a wider proposition[23]. The article 141 of the Constitution has recognised that the role of the Supreme Court to alter the law, in course of its function to interpret legislation, in order to bring the law in harmony with social changes[24]. Apart from this, *stare decisis* is not inflexible rule. It has less relevance in constitutional cases[25]. The Supreme Court has laid down that the following categories of decisions of the Supreme Court have no binding force:-

a) *Obiter dicta, i.e.,* statements which are not part of the *ratio decidendi.*

b) A decision *per in curium, i.e.,* a decision given in ignorance of the terms of a statute or rule having the force of a statute.

c) A decision passed *sub-silentio, i.e.,* without any argument or debate on the relevant question.

d) An order made with the consent of the parties, and with the reservation that it should not be treated as a precedent[26].

Conclusion

In conclusion, restorative justice is the best method for the settlement of compoundable cases or the cases in which the plea of bargain will put on motion because it is cheap and speedy way to the disposal of the case and it is also cheap and speedy disposal of the cases and also avoid the eliminate among the brotherhood, peace and harmony of the locality but it will also look into the matters of non-bail able and cognizable offences in which witnesses becomes hostile, it is a serious gravity of the nature of trial, it must strictly stop this practice in the litigation in order to give the punishment to the habitual offender/harden criminal.

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